

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Case No. 5:21-00492**

BRIAN BAUER,

Plaintiff,

v.

CHARTER SCHOOLS USA, INC.,

Defendant.

**State Court Case No:  
Wake County 21-CVS-14478  
(Jury Trial Demanded)**

**NOTICE OF REMOVAL**

Defendant Charter Schools USA, Inc.<sup>1</sup> (“Defendant” or “Charter Schools”), by and through counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, gives notice of removal of the above-captioned action from the General Court of Justice, Superior Court Division for Wake County, North Carolina, Case No. 21-CVS-14478, to this Court, the United States District Court for the Eastern District of North Carolina, and states as follows:

1. On or about October 29, 2021, the Plaintiff Brian Bauer (“Plaintiff”) filed this action in the General Court of Justice, Superior Court Division for Wake County, North Carolina.
2. On or about November 6, 2021, Defendant first received notice that Plaintiff filed in this action.
3. On or about November 8, 2021, Defendant was served with the Summons and Complaint.
4. In pertinent part, 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be

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<sup>1</sup> Plaintiff incorrectly named Charter Schools USA, Inc. as Defendant in this action. As clearly stated on Plaintiff’s offer letter, Plaintiff’s actual employer was Charter Schools USA at Cary, LLC. See Declaration of Margaret Nampon, attached hereto as **Exhibit 1** (“Nampon Decl.”).

removed by the defendant or the defendants...” 28 U.S.C. § 1441(a).

5. At the time the Complaint was filed, and at all intervening times, Defendant was, and is, a Delaware corporation with its principal place of business in Florida.<sup>2</sup> Pursuant to 28 U.S.C. § 1332(c)(1), a corporation is deemed to be a citizen of the State where it is incorporated and of the State where it has its principal place of business. Thus, complete diversity of citizenship exists in this case.

6. Plaintiff explicitly seeks to recover damages in excess of \$25,000, including “lost wages, loss of earning capacity, and other damages to be proven at trial.” Complaint at ¶¶ 32, 38. Plaintiff specifically alleges that Defendant wrongfully denied him the benefits of his agreement with Defendant. Complaint ¶ 36. Plaintiff’s offer letter with Defendant provided that he would earn the annual salary of \$95,000, annual bonus of up to 10% of annual salary, \$7,500 relocation bonus, and \$100 monthly cell phone allowance. *See* Nampon Decl. The offer letter also provided that Plaintiff would receive the relocation bonus in exchange for a two-year commitment to the school. *See* Nampon Decl. Assuming solely for purposes of this filing that all of the allegations in the Complaint are true, and disregarding for purposes of this filing each and every defense of Defendant, Plaintiff has placed more than \$75,000, exclusive of interest and costs, in controversy as set forth in 28 U.S.C. § 1332(a)(1) and, thus this Court has original jurisdiction over Plaintiff’s claims.

7. 28 U.S.C. § 1441(a) further provides that removal is proper “to the district court of the United States for the district and division embracing the place where such action is pending.

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<sup>2</sup> Plaintiff’s true employer, Charter Schools USA at Cary, LLC, is a Florida limited liability company. The sole member of Charter Schools USA at Cary, LLC is Charter Schools USA, Inc. For purposes of determining citizenship under 28 U.S.C. § 1332(a), a limited liability company has the citizenship of its members. *See e.g. Gen. Tech. Applications, Inc. v. Exro Ltda*, 388 F. 3d 114, 120 (4th Cir. 2004); *Burnette v. Bayview Loan Servicing, LLC*, 7:20-CV-00037, 2021 WL 1592663, at \*3 (E.D.N.C. Apr. 23, 2021). Charter Schools USA, Inc. is a citizen of Delaware and Florida. Therefore, even if Plaintiff had properly named Charter Schools USA at Cary, LLC as party to this suit, diversity of citizenship would still exist.

8. This Court is the United States District Court for the district and division where the action is pending, and, therefore, the appropriate venue for removal.

9. In accordance with 28 U.S.C. § 1446(a), attached hereto as **Exhibits 2, 3, 4 and 5** are copies of all process, pleadings and orders served upon Defendant in this action and/or filed in the General Court of Justice, Superior Court Division, Wake County, North Carolina, Case No. 21-CVS-11294.

10. This Notice of Removal has been timely filed within thirty (30) days after service of the initial Complaint. *See* 28 U.S.C. § 1446(b)(1).

11. Finally, after filing this Notice of Removal, Defendant will promptly serve written notice of the removal upon counsel for the Plaintiff and will file the same with the Clerk of the General Court of Justice, Superior Court Division for Wake County, North Carolina in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Charter Schools USA, Inc., respectfully requests that this action currently pending in the General Court of Justice, Superior Court Division for Wake County, North Carolina, Case No. 21-CVS-14478, be removed therefrom in its entirety to this Court, as provided by law, and, pursuant to 28 U.S.C. § 1446(d), and that the Wake County Superior Court proceed no further unless and until the case is remanded.

This the 30th day of November, 2021.

/s/ Tory Ian Summey

Stacy K. Wood

N.C. State Bar No. 21768

Tory Ian Summey

N.C. State Bar No. 46437

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing “*Notice of Removal*” was electronically filed with the Clerk of Court using the CM/ECF system, and served upon counsel for the Plaintiff via the Court’s electronic case filing system and via First Class Mail, addressed as follows:

Joseph D. Budd  
Osborn Gambale Beckley & Budd, PLLC  
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joe@counselcarolina.com

This the 30th day of November, 2021.

/s/ Tory Ian Summey  
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Tory Ian Summey  
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